

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN S. RHINE, ) No. C 08-03938 JF (PR)  
Petitioner, ) ORDER OF TRANSFER  
vs. )  
UNITED STATES OF AMERICA, )  
Respondent. ) (Docket No. 2)  
\_\_\_\_\_  
)

Petitioner, a prisoner proceeding pro se, filed a motion pursuant to 28 U.S.C. § 2255, attacking a sentence imposed by this Court. However, is it obvious from the motion that Petitioner is a state prisoner, who was convicted in San Diego Superior Court and is currently serving his sentence at Atascadero State Hospital, a California state institution.

A state prisoner challenging the constitutionality of his state conviction may do so by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Venue for a habeas action is proper in either the district of confinement or the district of conviction, 28 U.S.C. § 2241(d); however, petitions challenging a conviction are preferably heard in the district of conviction. See Habeas L.R. 2254-3(a); *Laue v. Nelson*, 279 F. Supp. 265,

1 266 (N.D. Cal. 1968); cf. Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989) (district of  
2 confinement best forum to review execution of sentence).

3 Accordingly, this case is TRANSFERRED to the United States District Court for  
4 the Southern District of California. See 28 U.S.C. §§ 1391(b), 1404(a); Habeas L.R.  
5 2254-3(b)(1). In view of the transfer, the Court will not rule upon Petitioner's pending  
6 motion to proceed in forma pauperis (Docket No. 2).

7 The Clerk shall terminate all pending motions and transfer the entire file to the  
8 Southern District of California.

9 IT IS SO ORDERED.

10 DATED: 1/14/09



JEREMY FOGEL  
United States District Judge